REMARKS/ARGUMENTS

Claims 1-42 are pending. Claims 12-17 are allowed. Claims 2-4, 7, 11, 24, 26-28, and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Claims 34-42 are withdrawn.

Claims 1, 5-6, 8-10, 29, and 32-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,044,469 to Horstmann (hereinafter "*Horstmann*"), in view of an AMINO COMMUNICATIONS press release published on M2 Presswire and elsewhere (hereinafter "*Amino*"), and further in view of U.S. Patent No. 6,157,721 to Shear (hereinafter "*Shear*"), and further in view of U.S. Pat. No. 7,149,894 to Futamura et al (hereinafter "*Futamura*").

Claims 18-23 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Horstmann*, in view of *Amino*, and further in view of *Futamura*, and further in view of U.S. Pat. No. 5,991,399 to Grounke et al (hereinafter "*Graunke*").

Applicants gratefully acknowledge the allowance of Claims 12-17. Applicants have not rewritten Claims 2-4, 7, 11, 24, 26-28, and 30 in independent form, believing that current amendments have rendered moot the rejections of the respective base claims.

Claims 1, 18, 25, and 29 are currently amended. Amendments to Claims 1, 18, and 29 are discussed below. The amendment to Claim 25 is merely to correct a typographical error. Claim 25 formerly read, "verifying… that each module… has not **having** been compromised." The extraneous word "having" has been deleted.

35 U.S.C. § 103 Rejections

To establish a *prima facie* case of obviousness, Office personnel have the burden to meet three basic criteria. First, Office personnel must show that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. The teaching or suggestion to make the claimed combination must be found in the prior art, not based on applicant's disclosure. Second, Office personnel must show that the teachings in the prior art have a reasonable expectation of success. Finally, Office personnel must show that the combined prior art references teach or suggest all the claim limitations. *See* MPEP § 2142.

Amended Claims 1, 18, and 29: *Amino* does not teach or suggest hindering observation.

Claims 1, 5-6, 8-10, 29, and 32-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Horstmann* in view of *Amino* and further in view of *Futamura*. Claims 18-23 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Horstmann*, in view of *Amino*, and further in view of *Futamura*, and further in view of *Graunke*. Without conceding any the positions taken by the Office Action, Applicants respectfully submit that present amendments to independent Claims 1, 18, and 29 have rendered moot the rejections of Claims 1, 5-6, 8-10, 18-23, 25, 29, and 32-33.

Specifically, Claims 1, 18, and 29 are amended to clarify that the *Amino* reference is not on point and does not teach or suggest what is claimed in Claims 1, 18, and 29. For example, Claim 1 now reads in pertinent part as follows:

> a tamper resistant digital content recovery module to recover protected digital contents of various types, **the recovery module employing measures to hinder observation of operations performed therein**....

The highlighted text substitutes for the previously used phrase "in an obfuscated manner." Applicants believe that the present amendment merely clarifies what was meant by "obfuscated manner" and does not substantially alter the subject matter encompassed by Claim 1. However, the phrase "obfuscated manner" apparently caused confusion, leading the Office Action to mistakenly assert that *Amino* is an appropriate reference.

The amended text clarifies at least two aspects of the recovery module. First, it clarifies that the recovery module takes active measures to prevent outside observers from discovering the internal operations of the module. Second, it clarifies that the measures taken by the recovery module are entirely independent from the level of protection applied to the digital content. In other words, regardless of whether the digital content is protected by military-grade encryption or the simplest substitution cipher, the recovery module takes steps to hide or obfuscate its internal operations.

> The relevant portion of the *Amino* press release reads as follows:

> Within the growing spectrum of broadband communications, different content and processes require varying levels of security - making it impossible to select a single regime that fits all. A new solution... overcomes the challenge by **varying the level of encryption in real time** depending upon the type and value of content or transaction....

(emphasis added). Thus, *Amino* discloses that at the level of encryption applied to digital content may vary in real time. All are agreed on this point.

However, it emphatically does not follow that merely because encryption may vary, a recovery module operating on that digital content would employ "measures to hinder observation of operations performed therein," as claimed in Claim 1. In other words, *Amino's* disclosure relates solely to the manner in which content is encrypted. Aside from implying that decryption must vary commensurate with the encryption, *Amino* teaches or suggests nothing about that manner in which a content recovery module operates, let alone "the recovery module employing measures to hinder observation of operations performed therein," as claimed in Claim 1. Neither *Horstmann* nor *Futamura* remedy this lack of teaching or suggestion.

Accordingly, Applicants respectfully submit that the Office Action has failed to state a *prima facie* case that Claim 1 is obvious. Claims 18 and 29 have been amended similarly and are allowable by similar reasoning.

Claims 1 and 29: *Horstmann* does not teach or suggest plain text modules.

Claim 1, as presently amended reads as follows:

An apparatus comprising:

> a tamper resistant digital content recovery module to recover protected digital contents of various types, the recovery module employing measures to hinder observation of operations performed therein;
> a plurality of **plain text** digital content rendering modules communicatively coupled with each other in a hierarchical manner forming a hierarchy of modules, with selective combinations of the plain text digital content rendering modules to be selectively employed to render the recovered digital contents of the various types, including one of the plain text digital content rendering modules **occupying a root position of the hierarchy** to exclusively receive all types of the recovered digital contents to be rendered, from the tamper resistant digital content recovery module;
> one or more storage units operative to store said tamper resistant module and said plurality of plain text digital content rendering modules; and
> a processor coupled with the one or more storage units to execute the tamper resistant module and the plurality of plain text digital content rendering modules.

Horstmann in view of *Amino* and further in view of *Futamura* does not teach or suggest "a plurality of **plain text** digital content **rendering** modules communicatively

coupled with each other... forming a hierarchy of modules," as claimed in Claims 1 and 29. Applicants respectfully submit that *Horstmann* discloses only ciphered or protected software modules, not "plain text" modules, as claimed in Claims 1 and 29.
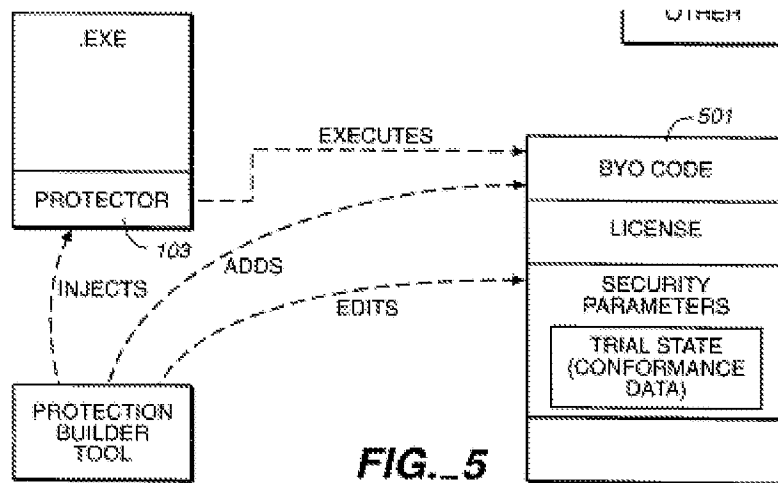
In ¶ [24], the term "plain text" (aka plaintext) is defined: "modules 102 may be provided and operated in plaintext (i.e. in an **unprotected** state)." Thus, plaintext means unprotected. This definition is entirely in keeping with the ordinary definition of the term, as would be understood by one of ordinary skill in the art.

By contrast, *Horstmann* discloses a protection wrapper that **protects** a software application program (or module). Abstract. Or as characterized by the Office Action, *Horstmann's* protection wrapper "recovers" (allows the execution of) "protected digital content" (the software application program). Thus, the Office Action implicitly analogizes *Horstmann's* protection wrapper with Claim 1's "tamper resistant digital content recovery module," and *Horstmann's* software application program to Claim 1's "protected digital content." Even assuming merely for the sake of argument that these analogies are apt, there is absolutely no teaching or suggestion in *Hostmann* regarding an additional hierarchy of unprotected ("plain text") digital content rendering modules. The Office Action seems to suggest that *Horstmann's* protected software application program could render digital content, but *Horstmann* is entirely directed towards **protecting** that application. Thus, *Horstmann* does not teach or suggest "a plurality of **plain text** [unprotected] digital content **rendering** modules communicatively coupled with each other... forming a hierarchy of modules," as claimed in Claims 1 and 29. Neither *Amino* nor *Futamura* remedy this lack of teaching or suggestion.

Claims 1, 18, and 29: *Horstmann* does not teach or suggest a root position of the hierarchy.

The Office Action also asserts that "one of the plain text digital content rendering modules **occupying a root position of the hierarchy**," as claimed in Claims 1, 18, and 29, is described by the "protection builder tool" in *Horstmann* Fig. 5. Fig. 5 is reproduced below, and Applicants respectfully submit that Fig. 5 does not describe a module occupying a root position of a hierarchy. Rather, Fig. 5 displays the functional interrelationships between different aspects of *Horstmann's* protection system. For example, Fig. 5 shows that both the

protector (executes) and the builder tool (adds) perform actions on the BYO code. Thus, *Horstmann* does not teach or suggest "one of the plain text digital content rendering modules **occupying a root position of the hierarchy**," as claimed in Claims 1, 18, and 29. Neither *Amino* nor *Futamura* remedy this lack of teaching or suggestion.

FIG._5

Claim 25: Office Action has not stated a *prima facie* case of obviousness.

Claim 25 reads as follows:

A processor implemented method comprising;
     verifying with a root one of a plurality of hierarchically organized digital content rendering modules, that each module that occupies an immediate downstream position in the hierarchy of modules from the root module has not been compromised, **during an initialization period**;
     exclusively receiving with the root one of the plurality of hierarchically organized digital content rendering modules a first digital content of a first type;
     rendering in part with said root one of said modules said first digital content;
     re-verifying with said root one of said modules that one of the at least one other one of the modules occupying an immediate downstream position in the hierarchy of modules from the root module is uncompromised; and
     transferring with said root one of said modules the first digital content to the re-verified immediate downstream module to further the rendering of the first digital content.

The Office Action made no mention of the highlighted elements of Claim 25, and Applicants are unable to readily discern where, if at all, the prior art of record teaches or suggests these elements. Specifically, the Office Action does not assert that the cited art discloses or

suggests "**re-verifying**... that one of the at least one other one of the modules... is uncompromised." Also, the Office Action failed to assert that the cited art discloses or suggests verifying with a root digital content rendering module that each immediately downstream module has not been compromised, "**during an initialization period**." On the contrary, the cited art (*Graunke*) teaches almost the exact opposite, namely that the key used to determine whether the DVD player is trustworthy "is dynamically generated and communicated **in real-time** to the trusted player in a secure manner." Col. 3 lines 63-64. Accordingly, Applicants respectfully submit that the Office Action has not stated a prima facie case of obviousness for Claim 25.

As discussed above, Applicants respectfully submit that independent Claims 1, 18, 25, and 29 are patentable over the prior art of record and respectfully request that these claims be passed to issuance.

Claims 5-6, 8-10, 19-23, and 32-33 are allowable at least by dependency.

Claims 5-6, 8-10, 19-23, and 32-33 depend from allowable independent claims and are therefore allowable at least by dependency. In addition, the Office Action failed to state a *prima facie* case of obviousness for these claims.

For example, the Office Action failed to state a *prima facie* case that Claims 9 and 32 are obvious. On page 11, the Office Action's entire discussion of Claims 9 and 32 reads, "In reference to claims 9 and 32 wherein the digital content of various types comprises streaming media contents of a plurality of media, and of a plurality of format types (column 5 lines 1-7)." The citation to col. 5 apparently refers to *Futamura*, as *Futamura* is the last reference discussed by name. However, the cited portion of *Futamura* bears no relationship to a plurality of media, as claimed in Claims 9 or 32. Based on citations elsewhere in the Office Action, Applicants believe the intent may have been to refer to *Horstmann*, but the cited portion of *Horstmann* seems similarly unrelated. Applicants are unable to discern what citation the Office Action intended to make, and respectfully submit that the Office Action failed to state a *prima facie* case that Claims 9 and 32 are obvious.

The Office Action also failed to state a *prima facie* case that Claims 10 and 22-23 are obvious for exactly the same reason. There is no citation to any relevant art that would indicate to Applicants how the prior art is said to teach or suggest the elements of Claims 10

and 22-23. The cited portion of *Horstmann* discusses a variety of ways that a specific computer could be identified in a license file:

> If the license file is moved to a different machine, the Protector will not regard it as a valid license. The snapshot of the machine may include such details as the type of video card, the amount of memory, the type of processor, etc. If a network card is present, then the unique serial number of the network card may be used.

This passage is not germane to the subject matter of Claim 10 and 23 ("apparatus is a selected one of a wireless mobile phone, a palm sized personal digital assistant...") or of Claim 22 ("digital content of various types comprises streaming media contents of a plurality of media types..."). Accordingly, Applicants are unable to discern how the prior art of record is said to render Claims 10 and 22-23 obvious. Applicants respectfully submit that the Office Action failed to state a *prima facie* case that Claims 10 and 22-23 are obvious.

For at least the reasons above, Applicants respectfully submit that Claims 1-33 are allowable and request that the Examiner permit these claims to proceed to issuance. Although additional arguments are believed to exist for distinguishing the cited documents, the arguments and amendments presented are believed sufficient to address the Examiner's rejections. Likewise, failure of the Applicants to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead, it is believed that the Examiner's positions are rendered moot by the foregoing arguments, and it is therefore not believed necessary to respond to every position taken by the Examiner with which Applicants do not agree.

CONCLUSION

Applicant submits that all pending claims are in condition for allowance. Accordingly, early and favorable action allowing all of the pending claims and passing this Application to issue is respectfully requested. The Examiner is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this Application.

We believe the appropriate fees accompany this transmission. If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to AXIOS Law Group's deposit account. The deposit account number is 50-4051.

Respectfully submitted,
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